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EXAMINER SCHWARTZ, CHRISTOPHER P				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARNETT R. WEBER

Appeal No. 2008-0529
Application No. 10/701,997

ORDER REMANDING TO EXAMINER
January 15, 2008

This application was received at the Board of Patent Appeals and Interferences (BPAI) on August 30, 2007. A docketing notice was mailed by the (BPAI) on November 8, 2007. However, a second review indicates that the application is not yet ready to be assigned to a judicial panel for appeal examination. The matters requiring attention prior to panel assignment are identified below:

Appellant's Brief filed January 9, 2006, is not in full compliance with the rules under 37 CFR § 41.37.

37 CFR § 41.37 states in part:

(c)(1) The brief will contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section . . . :

. . .

(v) *Summary of invention.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(1) Appellant's "SUMMARY OF CLAIMED SUBJECT MATTER" on pages 2-4 of the Brief begins with a paragraph consisting of a general description of the subject matter involved in the claims on appeal and points to paragraph 11 and 13 and Figures 1 and 2 of the specification for the location of the descriptive matter. The section then has a sub-heading titled "*Summary of Claims*" listing the claims on appeal with a brief description of its subject matter. However, the summary does not **specifically map** the subject matter of **each** of the **independent claims** (1, 5) to its location in the specification as outlined above. Correction is required.

(2) Appellant's Brief filed January 9, 2006 does not contain the section heading "(vi) *Grounds of rejection to be reviewed on appeal*" and its related content. (e.g., section "(vii) *Argument*" follows section "(v) *Summary of claimed subject matter*"). All of the headings and appendices as per 37 CFR § 41.37 are required. Correction is required.

MPEP § 1205.03 states:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

MPEP § 1205.03 also states:

The examiner should not require a corrected appeal brief for minor non-compliance in an appeal brief (e.g., the brief has a minor error in the title of a section heading). . . .

Accordingly, it is

ORDERED that the application is remanded to the examiner

Appeal No. 2008-0529
Application No. 10/701,997

- a.) to hold the Appeal Brief filed January 9, 2006, defective and notification to Appellant to file a supplemental paper to the Appeal Brief correcting the errors noted in (1) and (2) above,
- b.) for consideration of the Brief supplement, and
- c.) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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